

U.S. DISTRICT COURT
**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE
 BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District <u>New Jersey</u>
Name (under which you were convicted): ANKUR AGARWAL		Docket or Case No.: 19-cr-770
Place of Confinement: FORT DIX FEDERAL CAMP P.O. BOX 2000, Joint Base MDL, N.J. 08640		Prisoner No.: 71563-050
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. ANKUR AGARWAL

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging: _____
UNITED STATES DISTRICT COURT - District of New Jersey
50 Walnut Street, Room 4015 Newark, N.J. 07102

 (b) Criminal docket or case number (if you know): 19-cr-770

2. (a) Date of the judgment of conviction (if you know): September 3, 2020
 (b) Date of sentencing: September 1, 2020

3. Length of sentence: 94 Months Imprisonment; 3 yrs sup.rel., \$300 asses, and a \$25,000.00 Fine.
4. Nature of crime (all counts): INFORMATION - Counts One and Two - Computer Fraud and Abuse, in violation of 18, U.S.C., §§ 1030(a)(2) and 1030(c)(2)(B)(iii); and Ct#3 - Aggravated Identity Theft in violation of 18, U.S.C., § 1028A(a)(1).

5. (a) What was your plea? (Check one)
 (1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to? _____

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☒ No ☐
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: United States Court of Appeals for the Third Circuit
- (b) Docket or case number (if you know): 20-2890
- (c) Result: Judgment Affirmed
- (d) Date of result (if you know): February 3, 2022
- (e) Citation to the case (if you know): United States v. Agarwal, 24 F.4th 886 (3rd Cir. 2022)
- (f) Grounds raised: Unknowning or Involuntary Guilty Plea.

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court? Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: United States District Court - District of New Jersey
 (2) Docket or case number (if you know): 19-cr-770
 (3) Date of filing (if you know): April 26, 2022
 (4) Nature of the proceeding: Opposition to Turnover of Funds
 (5) Grounds raised: United States not entitled to seized prison account Funds.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: Affirmed in Favor of Government

(8) Date of result (if you know): May 27, 2022

(b) If you filed any second motion, petition, or application, give the same information:

- (1) Name of court: _____
 (2) Docket of case number (if you know): _____
 (3) Date of filing (if you know): _____
 (4) Nature of the proceeding: _____
 (5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

On April 25, 2018, a Criminal Complaint was filed against Ankur Agarwal ("Agarwal") charging him with Computer Fraud and Abuse, in violation of 18, U.S.C., § 1030 and Aggravated Identity Theft, in violation of 18, U.S.C., § 1028A(a)(1). On April 26, 2018, Agarwal was arrested on the Criminal Complaint. After an appearance before a United States Magistrate Judge, Agarwal was released on a \$100,000 Unsecured Appearance Bond. On April 30, 2018, the Court entered a "nunc pro tunc" Continuance of Agarwal's "30-Day" Speedy Trial Right under the Speedy Trial Act of 1974 and thereafter, the Court entered eight(8) additional Continuances delaying the Government's obligation to bring an Indictment or Information against

(b) Direct Appeal of Ground One: (See Continuation Page 6a, attached)

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Counsel

Agarwal within the mandatory "30-Day" period in the Act. After a delay of approximately one and a half (1½) years, the Government finally came with an INFORMATION charging Agarwal as specified in the COMPLAINT. The INFORMATION WAS DATED October 22, 2019. On the same day as the Information, Agarwal was presented with a "waiver of indictment" which he signed on advice of counsel. He, also, entered an Application for permission to enter a guilty plea which, again, he signed on advice of counsel. Additionally, on October 22, 2019, Agarwal signed a Plea Agreement on advice of counsel and entered a Guilty Plea to the three (3) Counts in the INFORMATION charging him with Computer Fraud and Abuse, in violation of 18, U.S.C., § 1030; Aggravated Identity Theft, in violation of 18, U.S.C., § 1028A(a)(1). In advising Agarwal to plead guilty, counsel did not advise Agarwal that he had a Speedy Trial Act right to "mandatory" dismissal of all charges.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal? Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: GUILTY PLEA WAS NOT KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY ENTERED

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Agarwal was not, also, advised by the Court, nor his Attorney, that he had a "mandatory" right to dismissal of all charges but by pleading Guilty, he was "waiving" his right to dismissal of the charges under

the Speedy Trial Act of 1974 because the Government failed to bring
an Indictment or Information within the "30-Day" period required under
the Act.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Counsel

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal? Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion, petition, or application? Yes ☐ No ☐
- (4) Did you appeal from the denial of your motion, petition, or application? Yes ☐ No ☐
- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal? Yes ☐ No ☐
- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: _____

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

- (1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal? Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Grounds One and Two. Initial 2255 Motion.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing: Terry Webb, Esq.
Attorney At Law

(b) At the arraignment and plea: Morristown, N.J. (Same as above)

(c) At the trial: Samuel M. Braverman, Esq.,
Attorney At Law
225 Broadway, Suite 715, New York, N.Y. 1007

(d) At sentencing: Same as above

(e) On appeal: Tor B. Ekeland, Esq.,
Attorney At Law
30 Wall Street, 8th Floor, New York, N.Y. 10005

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

Therefore, movant asks that the Court grant the following relief: _____

Vacate Conviction and Sentence and Dismiss INFORMATION with prejudice.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on

April 27, 2023

(month, date, year)

Executed (signed) on April 27, 2023

(date)



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

